



Ordinance Number 512
As Amended

AN ORDINANCE AMENDING CHAPTER 159 OF THE CODE OF
THE TOWN OF ELSMERE CONCERNING PEDDLING AND
SOLICITATION WITHIN THE CORPORATE LIMITS OF THE
TOWN OF ELSMERE

Sponsored By: 4th District Councilman, Charles McKewen

First and Second Reading:
December 10, 2009

Results: Passed 6 - In Favor, 0- Opposed , 1- Absent, 6th District Councilman Pasquale

Third and Final Reading:
January 14, 2010

Results: Passed 6 – In Favor, 0 – Opposed, 1 – Absent, 1st District Councilman
Jaremchuk

ORDINANCE 512

AN ORDINANCE AMENDING CHAPTER 159 OF THE CODE OF THE TOWN OF ELSMERE CONCERNING PEDDLING AND SOLICITATION WITHIN THE CORPORATE LIMITS OF THE TOWN OF ELSMERE

WHEREAS, The Mayor and Council have found that the existing code does not properly address the issues faced and questions asked concerning peddlers and solicitors throughout the town; and

WHEREAS, The Mayor and Council wish to make the rules and regulations governing peddlers and solicitors clear.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

A Chapter 159 of the Code of The Town of Elsmere to be deleted in its entirety and that a new Chapter 159 to read as follows be inserted in its place.

Chapter 159 PEDDLING AND SOLICITING

159-1 Definitions:

The following definitions shall apply to this chapter:

"Applicant"

Means any person that files an application for a solicitation permit provided by this chapter.

"Charitable" or "charitable purpose"

Means and includes the words patriotic, philanthropic, social services, welfare, benevolent, educational, civic or fraternal, either actual or purported.

"Charitable organization"

Means any benevolent, philanthropic, patriotic, or eleemosynary entity or one purporting to be such for solicitation and collection of funds for charitable purposes, including any local, county, or area division within this state of such charitable organization.

"Charitable solicitation"

Means solicitation engaged in or for a charitable purpose.

"Commercial purpose"

Means the means of or relating to the carrying on of a business for profit.

"Commercial solicitation"

Means solicitation engaged in for a commercial purpose.

"Contribution"

Means the promise or grant of any money or property of any kind or value, including the promise to pay or to give anything of value including, but not necessarily limited to, alms, food, clothing, money, subscription, property or donations under the guise of a loan of money or property, financial assistance or other thing of value.

"Do not solicit list"

Means a list of names and addresses of individuals in the Town of Elsmere who have requested in writing the placement of their residences on a list of people who do not want to be solicited at their residences, which list shall be maintained and published for purposes of informing the general public of the individuals' intention.

"Person"

Means any individual, firm, co-partnership, partnership, corporation, company, association, church, religious sect, religious denomination, society, organization, league, trust or any combination of the foregoing.

"Political solicitation"

Means solicitation engaged in for the purpose of lobbying, campaigning, promoting, advancing, espousing or benefiting a political cause, party or candidate for political office.

"Premises"

Means all separately addressed places of business, residences or other locations in which persons live, work or otherwise occupy in the Town.

"Religious" or "religious purpose"

Means the means of or relating to an organized religion or religious group or identifiable and definable set of religious beliefs or other ideology.

"Religious solicitation"

Means solicitation engaged in for a religious purpose.

“Residence”

Means and includes every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

“Solicitation”

Means communicating with another person without invitation for a specific commercial, charitable, religious, political or other purpose by means of:

1. In-person contacts on streets, highways, sidewalks and at residences within the Town; or
2. Distribution of written material, including the placement or delivery of such materials at the premises or on any property belonging to a third person.

"Solicitor"

Means a person who engages in solicitation as defined in this chapter.

"Town"

Means the corporate boundaries of the Town of Elsmere, Delaware.

159-2 Registration Requirements:

A. No persons not currently located and licensed to conduct business with the corporate limit of the Town of Elsmere shall enter the Town for the purpose of selling or taking orders for the sale of goods, wares or merchandise, or soliciting contributions without first registering with the Code Enforcement Office of the Town and obtaining a solicitation permit and registration card. Additionally, all persons before entering in or upon a private residence for the purpose of selling or taking orders for the sale of goods, wares or merchandise, or soliciting contributions, are hereby required to register at the Town Office of Elsmere and on forms provided by the Town furnish the following information:

1. The full name as it appears on a driver's license, state ID or birth certificate, birth date, mailing address and telephone number of the individual person who will be engaged in the proposed solicitation;
2. The present address and address of places of residence during the past three years, if other than present address;
3. The age of applicant and marital status; if married the name of spouse;

4. A physical description of the applicant, including sex, height, weight, hair color and eye color;
5. The name, address and telephone number of the person, firm, corporation or association by whom or on behalf of whom the applicant is employed, sponsored, promoting or conducting the proposed solicitation and the length of time of such employment or association;
6. The name and address of present employer and of all employer(s) during the past three years, if other than the present employer;
7. The nature of the business or activities conducted by the person or organization on whose behalf the proposed solicitation will be conducted;
8. A description of the nature and purpose of the proposed solicitation;
9. Period of time for which the permit is applied, including the beginning date, hours and expected duration of the proposed solicitation;
10. The date or approximate date of the latest previous application for permit under this chapter, if any;
11. Whether a solicitation permit issued to the applicant under this chapter or by any other issuing agency has ever been revoked;
12. Whether the applicant ever been convicted of a violation of any of the provisions of this chapter or the ordinance or laws of any other state or municipality regulating solicitation;
13. Whether the applicant has ever been convicted of the commission of a felony and/or any crime involving theft or dishonesty under the laws of this state or any other state or federal law of the United States;
14. The full name, mailing address and telephone number of at least one reputable person, not related to, affiliated with, or employed by the person who will be engaged in the proposed solicitation;
15. If more than one solicitor will be soliciting on behalf of a person or organization, then the name(s), address(es), and telephone number(s) of the person(s) who will be in direct charge of the solicitors on behalf of the person or organization;
16. Such additional information and any documentation as the Code Enforcement Office may deem necessary to process the application.

- B. Exemptions. Persons engaging in the following activities shall be exempt from the above Registration requirement:
1. Charitable solicitation, including solicitation for the benefit of a local elementary, junior high, or high school or for the benefit of a local community organization, such as scouts and little leagues, and solicitation for the benefit of a local nonprofit organization established for the benefit of the community, community schools, community projects, and for other similar purposes;
 2. Political solicitation;
 3. Religious solicitation;
 4. The distribution of handbills, flyers, brochures, pamphlets, leaflets, papers, and other literature and written materials, shall be exempt from the Registration requirement;
 5. All persons who are exempt from the Registration requirement are nevertheless subject to the nuisance and trespass restrictions contained in Section 5.34.060 of this chapter.

159- 3 Solicitation Permits:

- A. Application.
1. Every person required to obtain a solicitation permit shall make a written application for such permit, pay the permit fee and obtain the permit prior to engaging in solicitation within the Town.
 2. Application for the solicitation permit shall be made on the form provided by the Town and shall be submitted to the code enforcement office ten (10) days prior to the date on which the solicitation is to begin and shall be accompanied by the proper documentation necessary to complete the application. The applicant shall truthfully state in full the following information requested on the application:
 3. A fee of twenty-five dollars (\$25.00) shall be charged for every solicitation permit application to cover the cost of processing the application.
- B. Exemption. Persons engaging in the following activities shall be exempt from the solicitation permit requirement:

1. Charitable solicitation, including solicitation for the benefit of a local elementary, junior high, or high school or for the benefit of a local community organization, such as scouts and little leagues, and solicitation for the benefit of a local nonprofit organization established for the benefit of the community, community schools, community projects, and for other similar purposes;
2. Political solicitation;
3. Religious solicitation;
4. The distribution of handbills, flyers, brochures, pamphlets, leaflets, papers, and other literature and written materials, shall be exempt from the permit requirement;
5. All persons who are exempt from the solicitation permit requirement are nevertheless subject to the nuisance and trespass restrictions contained in Section 5.34.060 of this chapter.

159- 4. Solicitation on Public Streets:

- A. A permit for solicitation shall be obtained by a sponsoring person, company or organization for the conduct of any solicitation taking place upon any public street in the town, and copies of the permit issued for such solicitation shall be issued to and worn by each person participating in such solicitation upon any public street in the town.
- B. Except for Parts C and G hereunder, this Section shall not apply to persons engaging in the following activities:
 1. Charitable solicitation, including solicitation for the benefit of a local elementary, junior high, or high school or for the benefit of a local community organization, such as scouts and little leagues, and solicitation for the benefit of a local nonprofit organization established for the benefit of the community, community schools, community projects, and for other similar purposes;
 2. Political solicitation;
 3. Religious solicitation;

4. The distribution of handbills, flyers, brochures, pamphlets, leaflets, papers, and other literature and written materials, shall be exempt from the public streets solicitation permit requirement;
 5. All persons who are exempt from the public streets solicitation permit requirement are nevertheless subject to the nuisance and trespass restrictions contained in Section 5.34.060 of this chapter.
- C. No Solicitation shall be conducted on any public street in the town between the times from one hour before sundown to one hour after sunrise.
- D. By applying for, and as a condition to the issuance of, a permit pursuant to this section, a sponsor accepts liability, and agrees to hold harmless and indemnify the town, for any injuries to any person or property occurring during the solicitation that is causally related to an act of ordinary negligence of the persons soliciting on behalf of the sponsor, and the sponsor shall be responsible for supervising and controlling the conduct of all persons soliciting under the sponsor's permit.
- E. The sponsor shall carry and provide proof of general liability insurance.
- F. Persons soliciting on the public streets and sidewalks in the town pursuant to a permit granted under this section shall wear a badge or other easily readable form of identification that identifies the name of the sponsor and the name of the individual that is clearly visible at all times.
- G. Persons soliciting on the public streets and sidewalks in the town shall:
1. Wear a high visibility vest;
 2. Not obstruct vehicular or pedestrian traffic, walk in the middle of any traffic lane or remain in any lane when a light turns yellow or green;
 3. Not touch any vehicle or harass any motorist or passenger; and
 4. Comply with all applicable traffic regulations.
- H. Permit applications shall be reviewed by the Chief of Police and shall be submitted in a time period which is sufficient enough to allow the Chief or their designee to review the plans for the event and issue an opinion as to whether or not a permit should be issued based upon safety.
- I. The chief of police may recommend the approval of applications that are in compliance with the requirements of this chapter. Additionally the Chief of Police is hereby given the authority to withhold or to suspend all permits for solicitation

on any public streets within the Town due to weather or other conditions or circumstances that pose a potential threat to public health, safety or welfare hazard to the solicitors, motorists or general public until such time as the hazard no longer exists.

159-5. Permit Denial:

- A. If the Code Enforcement Officer or Chief of Police determines that the applicant has not provided all of the information and documentation required by this chapter, or has failed to meet the terms and conditions of a solicitation permit set forth in this chapter, then the Code Enforcement Officer or Chief of Police shall deny the issuance of the solicitation permit and shall give the applicant written notice and explanation of such denial.
- B. Any person who provides all of the requested information and documentation and complies with the permit terms and conditions shall be issued a permit.
- C. No permit shall be denied based on the content of any written publication in violation of the First Amendment freedoms of speech, religion, and the press or upon the basis of any other discriminatory factor including but not limited to race, religion, gender, sexual orientation or age.
- D. Any notice of denial shall be delivered in person or by first class U.S. mail addressed to the applicant's current residence address as set forth in the application. The applicant may appeal the denial of a solicitation permit pursuant to this section.

159-6 Permit Revocation:

Any solicitation permit issued may be revoked by the Code Enforcement Officer or the Chief of Police if the person engaged in solicitation is convicted of a violation of any of the sections in this chapter, or has refused to leave any premises when asked to do so, has made a false statement in the application, or becomes disqualified for the issuance of a solicitation permit under the provisions of this chapter.

Immediately after the revocation, the Code Enforcement Officer or the Chief of Police shall give the person written notice in person or by first class U.S. mail, return receipt requested, addressed to his or her residence address set forth in the application. The permit shall become null and void immediately on service of the notice of revocation. Receipt of a revocation notice sent by mail shall be deemed given when the recipient signs or refuses to sign the return card or otherwise fails to claim the notice within the time allowed by the U.S. Postal Office.

159-7 Appeal of a Revocation or Denial:

- A. Any person desiring to contest the denial or revocation of a solicitation permit shall have a right to appeal such decision to the Town Manager as provided in this section within fourteen (14) days after receipt of the notice of denial or revocation by providing to the Town Manager written notice requesting an appeal hearing.
- B. The Town Manager, after receipt of the written request for a hearing, shall set a time and date for such hearing which shall be within thirty (30) days.
- C. The Town Manager shall give written notice of the time, date and place for hearing to the applicant or permit holder at least five days in advance of the hearing date.
- D. At the hearing, the applicant or permit holder may present and submit evidence and witnesses to rebut the reasons cited for revoking or denying the permit. The appealing party shall have the right to file additional documents, amend the written appeal and appear at such hearing in person, be represented by an attorney and examine and cross-examine witnesses.
- E. The Town Manager shall not be bound by the rules of evidence or procedures followed in state courts but shall, take into account all reliable, probative and substantial evidence produced at the hearing relating to the denial of the application or revocation of the permit.
- F. The appealing party may supply at his or her own cost a court reporter.
- G. Within ten (10) days after the close of the hearing, the Town Manager shall render a decision in writing and make it available to the appealing party.
- H. The Town Manager may reinstate a revoked permit, grant the requested permit or renewal thereof, or affirm the decision to revoke or deny a permit.
- I. The decision of the Town Manager shall be final.
- J. The appealing party may waive an appeal hearing and submit what documentation he or she desires to have the Town Manager consider as a written appeal. The Town Manager shall render a decision within fourteen (14) days of the filing of a written appeal.
- K. Should the Town Manager find that a conflict of interest exists, which prohibits him, from conducting the appeal, he may appoint a designee to hear the appeal.

159-8 Solicitation Period:

- A. Each solicitation permit issued shall be valid for a period of time set by Code Enforcement Officer but shall not to exceed sixty (60) consecutive calendar days. The expiration date shall be printed and visible on the face of the solicitation permit.
- B. Each registration permit shall be valid for a period of one year, the expiration date of which registration identification shall be printed and visible on the face of the registration identification.

159-9 Permit Renewal:

Upon the expiration of a solicitation permit, the person shall be entitled to renew the permit for an additional sixty (60) day period, provided that the application for renewal continues to satisfy all conditions and requirements necessary to obtain an original permit and provided that all relevant information and documentation is updated and provided to the Code Enforcement Officer.

159-10 No solicitation signs, do not solicit list and trespass:

- A. Any owner, lessee, invitee or lawful occupant of a residence may prohibit solicitation by posting prominently on the front door or primary door to the residence, a sign that clearly states, "No Solicitation" or "No Soliciting" or words of similar meaning. Whenever any person engaging in solicitation, whether having a solicitation permit or not, encounters such a sign as described above, such person shall not engage in solicitation at such residence and shall immediately and peacefully depart from the premises.
- B. When any solicitor has gained an audience with the owner, lessee, invitee or occupant of a residence, whether the residence is posted pursuant to subsection "A" above or not, the solicitor shall immediately and peacefully depart from the premises when requested to do so by any owner, lessee, invitee or occupant.
- C. The Code Enforcement Office or the department of Public Safety of the Town shall maintain and publish a current do not solicit list on the Town website and make it available in hard copy upon request. No solicitor shall attempt to solicit on property that is included on the do not solicit list.
- D. Except as provided below, it is declared unlawful and shall constitute a nuisance and a trespass:
 - 1. For any person to solicit or attempt to solicit at any residence that:

- (a) Has a posted "No Solicitation" or "No Soliciting" or words of similar meaning sign on the front door; or
 - (b) B. Is on the do not solicit list; or
- 2. For any person to leave paper or other solicitation materials on property where the same or similar materials have been previously left and have not been picked up by the owner or occupant of the property.
- 3. For any person to remain on the premises or fail to depart peacefully from the premises immediately upon being requested to do so by the occupant.
- E. The provisions in this section prohibiting trespassing shall apply to any and all persons engaging in solicitation within the Town regardless of whether such persons are exempt from the requirement to obtain a solicitation permit or not.
- F. It shall be an affirmative defense to a charge of violation of subsection (D)(1) or (D)(2) of this section if the person charged proves that the solicitation was in response to a subscription or other request for the subject of the solicitation.

159-11 General Rules and Restrictions:

A. Identification.

Every solicitor who is required to obtain a solicitation permit shall display the permit, or other authorized form of identification, so that every person being solicited shall have an unobstructed view of the permit.

B. Fraud or Misrepresentation.

No person shall perpetrate a fraud or misrepresentation of any kind while engaged in solicitation within the town. No person engaged in solicitation shall employ any ruse, plan or scheme, or make any assertion, representation or statement of fact which misrepresents the purpose of the solicitation. It shall be unlawful for any person engaged in solicitation to represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has sponsorship, approval, status, qualification, affiliation or connection with an individual, organization, firm or corporation that he or she does not have.

It shall be unlawful for a person engaged in solicitation to represent that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

- C. Public Health and Safety.
No person shall engage in solicitation within the town in such a manner that creates a danger or threat of any kind to the public health, safety and welfare.
- D. Persons engaged in solicitation within the town shall have a nonexclusive right to use the sidewalks, streets and other public property within the town, but no person engaged in solicitation shall establish a permanent, stationary location for such solicitation, nor shall any person engaged in solicitation block or interfere with the ability of the public to enter upon, travel across or use any sidewalk, street or other public property.
- E. No person engaged in solicitation shall use abusive, vulgar, obscene or offensive language while engaged in solicitation within the town.
- F. No person engaged in solicitation shall threaten to use force, use force or otherwise coerce a person being solicited within the town.
- G. No person engaged in solicitation shall use any sound or voice amplification system or any other device which causes loud or disturbing noises.
- H. Display of Permit/Registration:
A solicitation permit card shall be approximately two inches by four inches and containing the name and address of the soliciting company, organization or association and the product being solicited, the name and address of the solicitor, the effective dates of the permit, in an easy readable form shall be visibly displayed by each person subject to the engaged in a soliciting.
- I. Change of information:
During the application process for, or during the term of, any solicitation permit, the applicant or permit holder shall promptly notify the Code Enforcement Office in writing of any change in any material information given by the applicant or permit holder in the application for such permit.
- J. Any person who solicits or distributes materials in the town, whether directly or indirectly through the use of an agent, shall be responsible for complying with the terms of this chapter and shall also be liable for a violation of the terms of this chapter whether the violation is committed directly or indirectly by an agent or employee.

- K. Any person who hires or employs an employee or agent to solicit on their behalf shall be vicariously liable for the acts of the employee or agent. Whenever any employee or agent violates the terms of this chapter, the person who employs the employee or agent shall also be responsible for such violation and subject to the appropriate penalties.

159-12 Violations and Penalties:

Any person violating the provisions of this chapter shall, upon conviction, be punished by a fine of not less than \$50.00 nor more than \$100 or imprisonment for such a period not to exceed 90 days, or by both such fine and imprisonment at the discretion of the court.

159-13 Fees:

- A. The fee associated with the issuance of a Solicitation Permit which will be valid for a period of time which is less than seven calendar days, shall be \$50 per day.
- B. The fee associated with the issuance of a Solicitation Permit which will be valid for a period of time, which is more than seven calendar days, shall be \$700.
- C. The fee associated with the issuance of a Solicitation Permit for any person or group who is not in any manner selling or attempting to sell any good, wares or merchandise and who is not attempting to solicit contributions shall be \$25, regardless of the period of time for which the registration card is valid.
- D. The fee associated with the renewal of any permit shall be in accordance with the schedule listed in Section A, B, and C of this section.

December 10, 2009

First and Second Reading

Third and Final Reading

Deborah Norkavage, Mayor

Joann I. Personti, Secretary

Approved As To Form

Edward McNally, Town Solicitor

SYNOPSIS:

This Ordinance amends section 159 of the Code of the Town of Elsmere by setting forth a more comprehensive set of Rules, Regulations and Guidelines for Peddlers and Solicitors.

Fiscal Impact:

This ordinance should have no fiscal impact since the fine and fee sections already exist in our current code and the new permit will simply be a computer generated document.